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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,113	09/24/2003	Leonard R. Kilby	79123-1131	8154

7590

04/26/2004

Michael A. O'Neil  
Michael A. O'Neil, P.C.  
Suite 820  
5949 Sherry Lane  
Dallas, TX 75225

EXAMINER

TAWFIK, SAMEH

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application N .</b>	<b>Applicant(s)</b>	
	10/670,113	KILBY ET AL.	
	<b>Examin r</b>	<b>Art Unit</b>	
	Sameh H. Tawfik	3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 63 and 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

The disclosure is objected to because of the following informalities: applicants need to amend the specification as follow:

(specification, page 15, line 2) delete "100" and instead insert --110--, etc.

Appropriate correction is required.

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. For example "Method for forming pattern of wrapped bakery products".

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 63 and 64 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 31 and 32 of U.S. Patent No. 6,401,435.

Although the conflicting claims are not identical, they are not patentably distinct from each other because applicants present claims and limitations in the bending case are not patentably distinct from the claims disclosed in PAT # 6,401,435.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 63 and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Euverard et al. (4,522,292).

Euverard discloses a method of assembling wrapped bakery products into predetermined patterns and thereafter transferring the patterns of wrapped bakery products into bakery trays for transport including the steps of providing a grouping apparatus (Fig. 1; via feed conveyor 21 and grouping gate 27) for receiving individual wrapped bakery products (Fig. 2; via group products 28; column 1, lines 9-13); arranging groups of between 1 and about 6 wrapped bakery products on the grouping apparatus (Figs. 3-6); providing a turntable (Fig. 2, via turn table 60); providing a transfer apparatus for moving groups of wrapped bakery products from the grouping apparatus onto the turntable (Figs 1 and 2, via conveyor 25); and arranging a subsequent group of wrapped bakery products on the grouping apparatus (Fig. 1; via feeding conveyor 21 and grouping gate 27) during movement of a previous group of wrapped bakery products from the grouping apparatus onto the turntable under the action of the transfer apparatus, see for example (Figs. 1 and 2).

Regarding claim 64: Euverard discloses a method of forming wrapped bakery products into predetermined pattern thereafter transferring the patterns of wrapped bakery products into bakery trays including the steps of providing a turntable (Fig. 2, via turn table 60); forming a

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pattern of wrapped bakery products on the turntable (Figs. 3 and 4); providing a transfer apparatus (Figs. 3-6, via conveyor 40, plate 81, and pins 89); moving patterns of wrapped bakery products from the turntable into bakery trays under the action of the transfer apparatus (Fig. 6); and forming a subsequent pattern of wrapped bakery products on the turntable during movement of a previous pattern of wrapped bakery products into a bakery tray under the action of the transfer apparatus, see for example (Figs. 3-6).

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schneider 5317859, Palamides 4870807, Schneider 4856263, Sabel 4481752, and Vogel 4176741 disclose different method of forming pattern.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2809. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sameh H. Tawfik  
Patent Examiner  
Art Unit 3721



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